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*Plaintiffs and the Proposed Class*

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 OAKLAND DIVISION

20 J. DOE 1, et al.,

21 Individual and  
22 Representative Plaintiffs,

23 v.

24 GITHUB, INC., et al.,

25 Defendants.

26 Case No. 4:22-cv-6823-JST  
Consolidated with Case No. 4:22-cv-7074-  
JST

27 **STIPULATION AND [PROPOSED]**  
**ORDER REGARDING PRESERVATION**  
**OF TELEMETRY DATA**

Courtroom: 6  
Judge: Hon. Jon S. Tigar  
Trial Date: None Set

28 AND CONSOLIDATED ACTION

1 Pursuant to Federal Rules of Civil Procedure 26(b)(2)(B) and 37(e), and Northern District  
2 of California Local Rule 7-12, the parties in the above-captioned action hereby stipulate and agree  
3 as follows.

4 WHEREAS, in the ordinary course of business and for reasons including cost, utility, and  
5 privacy of its users, Defendant GitHub, Inc. (“GitHub”) has adopted a rolling 18-month retention  
6 period for certain Copilot user data referred to as telemetry data;

7 WHEREAS, on June 1, 2023, GitHub initiated meet and confer with Plaintiffs regarding  
8 the preservation of this data, and GitHub archived any data outside of the rolling 18-month period  
9 pending the parties’ resolution of their discussions;

10 WHEREAS, on September 15, 2023, the parties participated in a Further Case  
11 Management Conference with the Court;

12 WHEREAS, during the Conference, the Parties and the Court discussed the issue of  
13 preserving archived telemetry data;

14 WHEREAS, Defendant GitHub and Plaintiffs stipulated, and the Court ordered, that the  
15 deadline to file a joint discovery letter brief regarding the preservation of telemetry data is  
16 October 6, 2023 (ECF No. 160);

17 WHEREAS, after continuing to meet and confer, GitHub and Plaintiffs came to an  
18 agreement regarding telemetry data, and GitHub and Plaintiffs agree that so long as GitHub  
19 maintains its telemetry data in accordance with the representations herein that retention is  
20 sufficient to satisfy its obligations;

21 WHEREAS, Plaintiffs reserve all rights to seek further reasonable preservation of  
22 telemetry data should the circumstances so require and Defendants reserve all rights to object to  
23 any such request for further preservation;

24 WHEREAS, GitHub and Plaintiffs wish to memorialize their agreement regarding  
25 preservation while continuing to meet and confer on other issues, such as the methodology for  
26 searching or sampling the telemetry data, the nature and amount of searching that is reasonable  
27 and proportional to Plaintiffs’ needs given the costs associated with maintaining and searching the  
28 telemetry data, and any potential cost shifting regarding the retention and/or searching of the

1 additional telemetry data GitHub will maintain in an archived state pursuant to this stipulation  
2 and order;

3 WHEREAS, this stipulation will not alter the date of any event or deadline already fixed  
4 by Court order;

5 **NOW THEREFORE**, the Parties, through their undersigned counsel, hereby stipulate  
6 and agree, subject to the approval of the Court, that:

- 7 1. Until February 21, 2025, GitHub will maintain in an archived state the telemetry  
8 data that it would ordinarily have deleted pursuant to its 18-month active retention  
9 period;
- 10 2. So long as GitHub maintains the additional telemetry data in an archived state  
11 through that date, it has satisfied its retention obligations;
- 12 3. Absent further order of the Court to the contrary, GitHub may delete the archived  
13 data after February 21, 2025 consistent with its retention obligations;
- 14 4. All other issues concerning cost-shifting, sampling, analysis, and scope of  
15 production of the retained data are reserved.

16  
17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

18  
19 DATED: October 10, 2023



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JON S. TIGAR  
United States District Judge

20  
21  
22  
23 Dated: October 6, 2023

Orrick, Herrington & Sutcliffe LLP

24  
25 By: /s/ Annette L. Hurst  
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27 Attorneys for GitHub, Inc. and  
28 Microsoft Corporation